SMUD
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April 8, 2010

The Honorable Mary Nichols, Chairman
Mr. James Goldstene, Executive Officer
Mr. Dave Mehl
Mr. Gary Collord
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: ARB Staff's Renewable Energy Standard Concept PDR

Dear Ms. Nichols, Mr. Goldstene, Mr. Mehl, and Mr. Collord,

Thank you for the opportunity to submit these comments on the Preliminary Draft Regulation for the California Renewable Electricity Standard (RES PDR). The Sacramento Municipal Utility District (SMUD), the second largest publicly owned utility in the state, appreciates the work of the Air Resources Board (ARB) staff, and their colleagues at the California Energy Commission (CEC) and California Public Utilities Commission (CPUC) to develop this simple and concise initial structure for the Renewable Energy Standard (RES) pursuant to Executive Order S-21-09.

In summary, SMUD views the RES PDR as a constructive start for the design of a cost-effective 33 percent RES. SMUD has three significant areas of comment:

- SMUD supports ARB's proposed definition of renewable energy credits (RECs) but without several additions that would make an RES REC different from a REC as defined within the California Renewables Portfolio Standard (RPS) and potentially affect contractual relationships regarding RECs.

- SMUD believes that the ARB must be guided in this rulemaking by AB 32's central principal of adopting regulations that achieve cost-effective GHG emission reductions. Thus, SMUD urges ARB to adopt Option (1) under proposed § 97004 (unlimited use of unbundled and undeliverable RECs) because Option (1) would allow regulated parties to procure the lowest cost, eligible renewables wherever they are found, and because the more renewables penetrate the energy markets the more carbon emissions are displaced and the greater the environmental co-benefits to California.

- SMUD also supports and encourages ARB to establish flexible compliance mechanisms, especially when regulated parties fall short of interim targets despite their good faith efforts. After all, the overarching goal of Executive Order S-21-09 is to achieve 33% procurement of eligible renewable energy *by 2020*, not necessarily each interim target along the way. While SMUD generally supports required compliance with interim targets, we view those targets as a means to a more important end, and thus they should not be viewed with the same stringency as the RES's primary goal of 33% by 2020.

SMUD expands upon these principal points, and related matters, in the following detailed comments.

A. 97001. Applicability Of the Renewable Energy Standard

SMUD believes it reasonable, as proposed by the RES PDR, to consider a threshold for a partial exemption of the RES to reduce the burden on the smallest regulated parties. SMUD continues to suggest that the ARB should determine the appropriate threshold by weighing the principle of applying the RES to as much of the State's retail electricity sales as possible against the higher proportionate costs to smaller regulated entities. The ARB staff has not addressed this trade-off in its reasoning behind reducing the threshold from 500 GWH to 200 GWH.

SMUD believes that the exemption should apply only to entities that were in existence in the California marketplace in 2009, or some historical date, and not apply to new market entrants, to prevent new entrants from sizing to stay below the threshold. New entrants should understand that the RES is one of the market obligations going forward.

Entities that were originally large enough to be above the threshold should continue to be fully obligated by the RES if they fall below the threshold in 2011 and beyond, to avoid an incentive for entities to split into smaller, partially exempted, entities. These entities, once includedin the RES, should be able to continue complying below the threshold with minimal impact on costs.

SMUD also thinks that the proposal in the RES PDR in 97001(b)(1) and (2) is a feasible approach to covering entities that are initially partially exempt but grow to be fully covered, with one small change. The phasing in of the obligation through new sales appears fair, but SMUD would propose that these entities become fully covered when they reach the current percentage obligation of regulated parties (e.g. 20% in 2014) rather than 33%. As stated, these entities could be obligated to procure renewable energy beyond the level procured by fully obligated entities. SMUD's proposed language is:

(3) Once a previously partially exempt regulated party procures RECs equivalent to providing ~~33~~the percent of its retail sales to end-use customers from eligible energy resources that is concurrently required from entities subject to Section 97003, the regulated party will be subject to the requirements of section 97003.

SMUD believes that the suggestions above will provide necessary simplicity and clarity about the proposed threshold for partial exemption, and help to prevent 'on-again, off-again' exemption status for those entities near the threshold.

B. 97002. Definitions and Acronyms

"**Renewable Energy Credit or REC"** – The proposed definition of a Renewable Energy Credit or REC is similar to the current statutory definition applicable to California's RPS Program, with two problematic additions. The proposed regulation adds sentences defining a REC as not including *"…any allowance issued pursuant to a cap and trade or similar program,"* and asserting that *"…a REC does not constitute property or a property right."* SMUD recommends that the definition of a REC should track the definition in current law, codified at Pub. Util. Code 399.12(f), with the exception that a RES REC should not require delivery – an exception that SMUD supports. Changing the definition further could open up contractual issues in currently signed contracts regarding the value of RECs and would tend to create two species of RECs: one for the RPS market and one for the RES market. RECs in contracts are now purchased as property rights, whether in POU or IOU contracts, and when fully implemented by the CPUC, will be traded as property. Asserting that RECs do not constitute property rights is contractually problematic, and would create further separation between RPS RECs and RES RECs. Accordingly, SMUD recommends that the REC definition in the RES PDR read as follows:

> **"Renewable Energy Credit or REC"** means a ~~credit~~certificate of proof issued by WREGIS ~~associated with~~that one MWh of electricity was generated by an eligible renewable energy resource or facility as evidenced by a Renewable Energy Certificate. A REC does not include an emission reduction credit issued pursuant to Health and Safety Code section 40709 or any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels. ~~A REC also does not include any allowance issued pursuant to a cap and trade or similar program. A REC does not constitute property or a property right.~~

"Renewable Portfolio Standard or RPS" – By simply referring to the statutory provisions at Public Utility Code section 399.11, the ARB probably means the California Renewables Portfolio Standard Program overseen for electrical corporations by the CPUC and CEC, although technically this section of code refers to both the RPS for electrical corporations and individual RPS programs (per Section 387) established separately by publicly owned utilities (POUs). SMUD believes that this technically correct interpretation is appropriate for the RES, and has made edits where appropriate to distinguish in the RES text when it appears that ARB staff is referring only to the IOU version of the RPS. ARB could clarify its intent here by adding words to the definition. Hence, the definition could read:

> **"Renewables Portfolio Standard or RPS"** means the Renewables Portfolio Standard" as set forth in Public Utilities Code section 399.11 et seq. for electrical corporation and publicly owned utility service areas.

"RES Qualifying POU Resource" – The RES PDR definition of a RES Qualifying POU Resource appears intended to allow a reasonable transition from the variety of POU RPS eligibility definitions to a common RES eligibility definition for all regulated parties. However, as written, the definition and remainder of the provisions leave some uncertainty about whether POUs can alter their RPS portfolios for purposes of the RES regulation, and whether IOUs can utilize RES Qualifying POU resources in some circumstances. The definition suggests that a POU governing board must approve a resource as counting toward its RPS targets, but includes no date by which such action must be taken, leaving open the possibility that a POU governing board may take action today or in the future to qualify a historically owned or contracted for resource for the RES. In addition, while RECs from RES Qualifying POU Resources cannot be traded per the RES PDR, the underlying resource in question is deemed eligible and there is no prohibition of an IOU acquiring such a resource from a POU and claiming that resource for the RES. SMUD suggests the following language to deal with the first of these issues, and proposes that the second be dealt with in section 97004:

> **"RES Qualifying POU Resource"** means a renewable energy facility that is not certified by the CEC as eligible for the RPS program, but whose generation was approved by the POU's Governing Board prior to September 15, 2009 as counting towards its RPS targets, and:
>
> (A) The POU owned the facility prior to September 15, 2009 or
>
> (B) A contract for electricity from the facility was executed prior to September 15, 2009; and:
>
> (1) The POU procured electricity and RECs, or RECs without electricity, from the facility prior to September 15, 2009; and
>
> (2) The electricity was procured during the initial term of the contract and not during any extended or modified term.

"Retire or retired" – A small correction should be made to the definition of "Retire or retired". The current definition implies that a REC may be retired either for the RPS or the RES – it is SMUD's understanding that individual RECs may be retired for compliance with both the RES and RPS. SMUD does not believe that the ARB intends for regulated parties to choose among the RES and RPS when retiring RECs. SMUD suggests the following language change:

> **"Retire or retired"** means to transfer a WREGIS certificate to a "retirement subaccount" and thereby remove the certificate from circulation. For purposes of this article, a WREGIS certificate would be retired to demonstrate compliance with the RES or RPS or both.

C. 97003. Renewable Energy Standard Obligations.

SMUD suggests several changes in Section 97003, which lays out the basic percentages and compliance intervals for the proposed RPS.

First, SMUD suggests that rather than using the term *"… percentage of total MWh of electricity delivered to retail end-use customers..."* the regulation should retain the common language of the current RPS and use the term *"percentage of retail sales".*

Second, SMUD suggests several changes to the RES PDR compliance intervals and REC percentages described in Section 97003. While SMUD supports interim targets and multiyear compliance periods for the RES, there appears to be a conflict in the RES PDR between the two concepts. SMUD has previously recommended compliance periods of no less than 3 years, and the RES PDR starts with 3 year compliance periods but includes a two-year compliance period in 2018 and 2019. SMUD reluctantly understands that this period is useful in the RES PDR structure, where the REC percentage is applied to all of the years of the compliance period, in order to avoid establishing a 33 percent requirement in 2018. However, SMUD suggests that 3-year compliance periods be continued beyond 2020 to provide continued compliance flexibility beyond 2020 to help deal with hydro variability and the lumpy nature of much renewable procurement.

Table 1. Compliance Intervals and REC Percentages

Compliance Intervals	REC Percentage
2012 through 2014	20
2015 through 2017	24
2018 through 2019	28
2020 and every 3 years thereafter	33

Finally, SMUD notes that the reference in section 97003 to the '…formula in section 97005 (c) of this article.' should read: '… formula in section 97005 (d) of this article'.

D. 97004. Renewable Electricity Standard Requirements

The RES PDR suggests two options for eligibility of RECs that would satisfy the RES obligations described in 97003. The first option is to allow the unlimited use of unbundled and undelivered RECs for RES compliance; and the second option is to follow the approach recently adopted by the CPUC, which allowed use of 'tradeable' or unbundled RECs for the IOU RPS program under specific definitions and limits.

SMUD supports Option 1, permitting the use of unbundled and undelivered RECs from eligible renewable resources, because it would promote the development of new, cost-effective RES-eligible generation on a regional basis and maintain competitive REC prices by increasing market liquidity. Unbundled RECs allows the development of lower cost renewable resources that may be constrained for delivery to California by transmission availability, but can be developed to serve local load, and allows easier transfer of rights among trading parties, holding down the cost of the RES. SMUD's one issue with this approach is consideration of how unbundled RECs may interact with and affect the allowance market under the pending cap-and-trade structure in the state or region. If unbundled and undelivered RECs become a substantial portion of RES compliance, and these RECs are not considered appropriately in the allowance structure under cap-and-trade, increases in allowance prices may result, and there may be a need then for a limit on them in the RES. SMUD describes this issue in more detail below, and lays out some options for considering the GHG implications of RECs to address the potential concern about cap-and-trade costs.

SMUD does not support Option 2 – allowing the use of "tradable" RECs consistent with the approach identified by the CPUC (in the recent CPUC TREC decision). While not regulated by the CPUC, SMUD participated in the proceeding leading to the TREC decision, and was opposed to a tradable REC structure that conflates issues involving resource location and delivery with the contractual bundling or unbundling of renewable attributes from the underlying energy. SMUD expands upon our disagreement with the CPUC direction below.

Unbundled RECs and Allowances

One reason that a load serving entity (LSE) might procure or build renewable resources is to reduce its cap-and-trade allowance burden. The renewable power thus procured or generated avoids procurement or generation of conventional power sources to meet load for that entity, reducing the emissions associated with the entity's power sources, hence the amount of allowances required under a cap-and-trade structure. While a MWH of renewable generation cannot be transferred to the allowance market and traded there –

it has no allowance value unless awarded one by a regulator -- increased generation of renewables can affect the allowance market by reducing the demand for allowances as entities reduce their use of conventional resources to serve load.

Unbundled and undelivered RECs represent generation of renewable power, where the REC but not the underlying energy has been purchased for compliance with the RPS or RES and associated then with conventional power being procured or generated. Conceptually, this should have a similar effect on allowance markets as bundled renewable procurement – purchases of unbundled, undelivered RECs should reduce overall allowance demand as fewer conventional resources are needed to meet load. But until the reduced carbon emissions somewhere in the WECC come under the same cap applicable in California there is no assurance that this reduction would reduce the demand for allowances in any AB 32-related cap-and-trade market. Consequently, the LSE purchasing RECs may not see its demand for allowances decrease and there may be upward pressure on allowance prices. If a significant portion of the RES market is met with unbundled RECs (and undelivered energy), and the cap-and-trade structure does not appropriately account for these, the effect on allowance prices may inappropriately increase allowance costs and there may be no GHG benefit accounted for in California from the purchase of the unbundled RECs. In such a case, consideration of a limit on unbundled RECs may be appropriate. As mentioned above, SMUD does not believe that such a limit is warranted at the beginning of the RES.

SMUD believes that two ways in which the cap-and-trade program can properly account for unbundled RECs could be explored. The first approach recognizes that when a REC is unbundled from the commodity energy, that energy is no longer “renewable,” but rather is ”null power” – neither a renewable nor a specific conventional resource. But since the LSE purchases the unbundled REC without energy, it must buy or generate an equivalent amount of energy from a conventional source, with its own carbon signature. It is fair that the owner of the null power be allotted a proxy carbon signature, while the owner of the REC be allotted a zero carbon signature (since the buyer of the REC is paying a premium price). The zero carbon signature of the REC can be associated with the equivalent amount of conventional power being generated, or procured with unspecified imports, and thereby reduce the allowance obligation of the procuring entity, while the entity procuring the commodity energy would bear responsibility for any GHG obligation. Under this approach, entities that procure unbundled RECs would see their allowance obligation reduced, thereby eliminating or mitigating the potential effect on allowance prices.

The second approach would be to adjust the cap-and-trade cap upward to reflect unbundled REC purchases, while recognizing that the unbundled RECs represent additional renewable generation in the WECC, and hence decreased conventional generation and GHG emissions, which can be accounted for in California’s overall AB 32 goals.

Inappropriateness of Option 2

As mentioned above, the CPUC approach for tradable RECs envisioned by Option 2 in the PDR confuses the location of the renewable resource with the location of the emissions from the conventional resource that the renewable is meant to displace. There are two basic, but incorrect, assumptions in the CPUC decision. First, the decision contends that unbundled RECs do not have the same price-stability and local environmental benefits as bundled transactions. While it is true that bundled transactions are typically for long terms with fixed prices, there is no reason why RECs cannot be procured similarly. Indeed, renewable energy projects are more easily financed if the RECs value stream is fixed for an extended period so it's likely that the market will steer RECs-only contracts in that direction. Also, the volatility that concerned the CPUC is really the common volatility of commodity energy prices. Such volatility is dealt with routinely in the market with various hedging instruments. Further, with the development of greater amounts of renewable energy supplies throughout the WECC, the prices for RECs should come down and the price for commodity energy from conventional plants should decrease as well. Thus, any regulatory design that broadens the market for RECs should promote liquidity and price stability.

Additionally, the CPUC assertion that out-of-state renewable purchases in general do not provide in-state local environmental benefits is also incorrect. Energy supplies move from source to sink without regard to state boundaries, and conventional power plants will generate and sell electricity regionally if market prices are high enough to cover the marginal cost of generation. In-state delivery of renewable energy, or in-state generation, does not guarantee any displacement of in-state conventional generation (and associated emissions), as these plants will continue to operate as regional energy market conditions dictate (except for limited reliability, must-run considerations). Thus, the most effective way to displace California conventional generation, and bring local environmental benefits to California, is to maximize the supply of cost-effective, regional renewable generation. Only then will increased energy supplies limit market prices, and lead to the shutdown of marginal (read: higher polluting) conventional plants. Imposing limits on low-cost, out-of-state renewable resources is counterproductive to this goal, while allowing relatively unfettered procurement of out-of-state generation furthers the goal.

Second, the CPUC decision contends that procurement from resources located outside the State (and not interconnected to in-state balancing authorities) is largely indistinguishable from an unbundled REC transaction, and so should be treated as such, including imposing potential limits on such transactions. SMUD contends that the CPUC approach makes a flawed distinction between in-state delivery from plants located in the state and those out-of-state that are connected in real time through firm transmission. Most if not all of SMUD's out-of-state renewable procurement involves bundled, delivered renewable energy, and these should not be considered to be RECs-only, and subject to arbitrary limits, when in fact they are not.

In addition, the limitations on out-of-state generation are unduly protectionist, risking violation of the Commerce Clause of the United States. Such disparate treatment of in-state and out-of-state resources is *per se* discriminatory and would be vulnerable to challenge in the courts. The ARB should avoid such foreseeable risks in designing the RES program.

Remaining Aspects of 97004.

The language in subsection 97004 (b) should be clarified. RECs that are retired in WREGIS for RES compliance should be considered also retired for the same entity for compliance with the RPS and any federal portfolio standard that gets adopted. The language should read:

> RECs must be retired in WREGIS for RES compliance and, other than for meeting overlapping compliance obligations of the RPS or a federal portfolio standard, may not be used to meet the requirements of any other federal, state, or local program.

The language in subsection 97004 (c) should also be clarified in two aspects. First, the phrase"… up to 20 percent of a regulated party's retail sales.. " is slightly unclear. Second, although RECs from a RES Qualifying POU Resource cannot be traded per 97004(d)(1), nothing in the RES PDR as it currently reads would prohibit an IOU from purchasing a POU-owned RES Qualifying POU resource and use that resource for its compliance obligation. The ARB may wish to allow this, but if the intent is to limit RES Qualifying POU Resources to their original owners or procurers, the language should read:

> RECs procured from a RES Qualifying POU Resource may be used by the initial POU owner or procurer for RES compliance for up to the amount that reflects 20 percent of the regulated party's retail sales to its end-use customers.

SMUD believes that allowing banking of RECs as proposed in the RES PDR is an important flexibility mechanism. SMUD understands the proposed limits on trading of RECs from RES Qualifying POU Resources and from resources procured by partially exempted regulated parties. Although the RES PDR suggests that staff's intent is to allow trading for up to three years among regulated parties, as described in section 97004(b), it is not clear exactly how banking or trading will work in the current draft. SMUD has no objection to the additional provision proposed in the 'Discussion of Concept' portion of 97004(d), noting that it would be useful to clarify that once retired to a WREGIS subaccount for purposes of the RES, the REC would remain bankable for that purpose. Without this additional provision, SMUD sees nothing in 97004(d)

provisions that would limit trading to only 3 years. SMUD believes that the intent of ARB staff is to allow unlimited banking of RECs and allow trading of RECs for up to 3 years, commensurate with CPUC policies, but this is not clear in the provisions at present.

SMUD supports consideration of additional flexible compliance mechanisms, beyond the three year compliance periods in section 97003 (as proposed to be modified by SMUD) and the banking and trading provisions in section 97004, that can reflect circumstances beyond the control of utilities and other regulated parties that could result in a shortfall of resources or a delay in compliance under the RES. At the end of a compliance period, a regulated party must surrender RECs equal to the obligation for that period, and as proposed cannot include RECs 'earmarked' or 'borrowed' from generation in future compliance periods. SMUD understands that extensive borrowing from forward compliance periods would be problematic, but suggests that borrowing may be feasible in limited circumstances. For example, SMUD would propose that regulated parties be allowed to borrow future RECs from the following two years after the end of a compliance period, but only from resources that came on-line in the last year of that compliance period (so are relatively new) or from resources that are under construction at the end of that compliance period (so are relatively certain to be built). Such a provision would provided needed flexibility in the transition between compliance periods.

In general, regulated entities should not be penalized when, despite their best faith efforts, lack of necessary transmission, delays in project permitting or siting, or the plain unavailability of sufficiently cost-effective resources, prevents them from achieving RES compliance in a particular period. SMUD appreciates the compliance flexibility already included in the RES PDR, and suggests the above limited borrowing provision to help ensure that regulated parties acting in good faith are not penalized. encourages the ARB to consider a structure where, by 'looking forward', achievement of compliance can be reasonably projected because of steel in the ground – projects or related necessary transmission that is in progress. Such physical evidence of resource progress is one type of evidence of good faith procurement toward compliance.

E. 97005. Monitoring, Verification, and Compliance

SMUD supports monitoring and verification requirements to ensure that all regulated parties are appropriately participating and complying with the proposed RES. In general, the requirements laid out in the RES PDR appear reasonable.

SMUD requests clarification of the language in section 97005 (b)(2)(A), which describes the filing of annual RES progress reports with the CEC and the ARB. This section suggests that the required report *"… contain sufficient information to **verify annual progress towards compliance** with the REC retirement obligations of section 97003 …".* SMUD notes that the RES PDR does not require 'annual progress toward compliance' in section 97003, and recommends that the language be changed to reflect a "demonstration of reasonable progress to enable compliance" standard in these annual

reports. In addition, the section states that *"Where a REC obligation was not met, the report shall document the MWH shortfall and demonstrate how the local publicly owned utility or electrical cooperative will make up the shortfall within the succeeding compliance period."* Again, SMUD notes since this is an annual report, the language appears to imply an annual compliance obligation, which is not envisioned in the RES PDR. This can be fixed by adding a phrase that is tied to the first year of a compliance period, as the report in this year will be reflective of the regulated party's progress at the end of the previous compliance period. SMUD suggests the following language for 970005(b)(2)(A):

> (A) *RES Progress Report*—No later than June 1, 2013, and June 1st of each subsequent year, the responsible official of the local publicly owned electric utility or electrical cooperative shall submit a progress report. The report shall contain sufficient information to ~~verify annual~~demonstrate reasonable progress to~~wards~~ enable compliance with the REC retirement obligations of section 97003, and include a WREGIS report of eligible RECs procured by contract and resource type during the prior calendar year. The report shall document retail sales for the proceeding calendar year using the forms required under the Quarterly Fuel and Energy Reports to be filed with the CEC by February 15 of each year. In the first year of a compliance period, ~~W~~where a REC obligation for the previous compliance period was not met, the report shall document the MWh shortfall and demonstrate how the local publicly owned utility or electrical cooperative will make up the shortfall within the current~~succeeding~~ compliance period.

In addition, while SMUD has been active and compliant with providing resource procurement and status information to assist the CEC's biannual POU Resource Adequacy report and process, it appears that the level of detail on renewable procurement described in section 97005 (b)(2)(B) goes beyond the level of information currently supplied. SMUD is comfortable supplying additional information where that information is readily available or not costly to obtain, and so suggests changing the language in 97005 (b)(2)(B) as follows:

> (B) *RES Procurement Plan*—Every two years, the responsible official of the local publicly owned electric utility or electrical cooperative shall file a procurement plan as part of the Integrated Energy Policy Report (IEPR) process and cycle, starting with the 2011 IEPR. The plan shall include a project development status report of any project development activities, including, where readily available, information about site control, permitting status, financing status, interconnection progress, and transmission access.

Finally, SMUD notes that section 97005 (d), referring to the *RES formula* to be used to calculate annual RES progress, is confusing and needs to be clarified. SMUD believes the language should read:

> *RES Formula*. Regulated parties shall calculate annual RES progress as follows:
>
> > *Total RECs available and scheduled to be retired for an applicable year, divided by*Total retail sales (in ~~k~~MWh) for that year. ~~Multiplied by the percentage of procured and retired RECs (in kWh) for the applicable year~~

This formula would apply to actual RECs retired for a compliance period, when reporting regarding actual compliance.

F. 97006. Certification of Eligible Renewable Energy Resources

SMUD notes two issues with section 97006. First, the section describes certification, but does not actually require it. SMUD suggests that language be added to require certification, and that this language could replace the first paragraph of section 97006. SMUD suggests the following:

> "Eligible Renewable Energy Resources shall be certified by the CEC or by the Executive Officer or his/her designee under interagency agreement or third party contract as eligible resources for the RES." ~~Renewable energy facilities or resources potentially eligible for the RES include facilities certified by the CEC as eligible for the California RPS program pursuant to Public Utilities Code Section 399.13, out of state facilities that meet the requirements of the RPS program (excluding its delivery requirements), and facilities that qualify as a RES Qualifying POU Resource as defined in this article.~~

Second, SMUD notes that certification in the RES PDR is divided up into two parts, with the first part – 97006(1) -- covering certification at the CEC of RES resources meeting the IOU RPS eligibility definition in full, as currently happens with the IOU RPS, while the resources that are eligible save for delivery considerations or because they constitute RES Qualifying POU Resources are to be certified with the Executive Officer. Here, SMUD merely notes that a proposed revision or clarification to the definition of 'RPS' in the RES PDR to include the POU RPS programs in place implies that the certification here would need to specifically refer to the RPS in place for electrical corporations. In addition, SMUD suggests that the two certification processes included in the RES PDR be as similar as possible when implemented.

G. 97007. Interagency Cooperation

SMUD supports interagency cooperation and the ability of the ARB to enter into memorandums of understanding or interagency agreements to make implementation of the RES as reasonable as possible. In this regard, SMUD points out that the CAISO is not the only balancing authority in the state, and that Executive Order S-21-09 expressed the desire for collaboration with all balancing authorities. Hence, SMUD would change the text as follows:

> The Executive Officer may enter into memorandums of understanding or interagency agreements with the CEC, CPUC ~~or~~ CAISO, or POU balancing authorities to assist in the implementation of the processes, procedures and requirements set out in this article.

H. 97008. Enforcement

SMUD has two comments on section 97008. First, SMUD appreciates the RES PDR envisioning the use of the penalty structure in place at the ARB, rather than establishing a new enforcement and penalty structure with the CEC or some other agency. In addition, SMUD appreciates the indication that violations of section 97003 – the basic RES obligation to cover a certain percentage of retail sales with renewable resources – will be calculated on a MWh basis as indicated in 97008 (a), rather than a basis tied to daily violations, which would be particularly problematic for the proposed multiyear compliance periods. SMUD reads this as envisioning a penalty structure that reflects the amount of MWh shortfall a regulated party is burdened with, and looks forward to examining the details of the expected, MWh-based penalty structure.

Second, while SMUD understands that late or insufficient reporting for the RES should be subject to penalties as described in section 97008 (b), SMUD believes that there should be explicit provisions for any reports that are deemed to be incomplete or inaccurate to be "made whole", based on explicit direction provided by the ARB and within a certain timeframe without penalty.

I. 97009. Treatment of Confidential Information

SMUD has no comments on this section at this time.

J. 97010. Severability

SMUD has no comments on this section at this time.

K. 97011. Regulation Review

SMUD appreciates the acknowledgement in the RES PDR of a need for periodic regulation review, and believes that it is good to have some definition of when reviews will occur, as described in the RES PDR. SMUD suggests the RES regulations should allow for additional review flexibility, in case market conditions suggest a need for additional review outside the timeframes listed in the regulation. SMUD suggests the following language:

> (a) As provided in this section, the Executive Officer, in consultation with the CEC, CPUC and CAISO, shall conduct at least three implementation reviews of the RES program. ~~Each r~~Reviews shall be completed and presented to the Board by December 31, 2013, December 31, 2016, and December 31, 2018.

In closing, SMUD again expresses its appreciation of the hard work by ARB staff in the initial crafting or the RES, and for the opportunity to submit these comments. We look forward to participating throughout the development of the RES regulations.

Respectfully submitted,

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Senior Attorney